

SENATE BILL No. 273

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2; IC 31-19-1-3; IC 31-20-2; IC 31-35-1; IC 35-46-5-3.

Synopsis: Abandoned embryos and adoption matters. Excludes gestational carriers from the definition of surrogacy. States that the general assembly favors the public policy of the right of a child to a permanent and secure home and that this right outweighs the inconvenience caused to a nonresident who is served notice in an adoption proceeding. Specifies that a voluntary termination of parental rights is irrevocable and may not be set aside except for specified circumstances. Requires the health finance commission to study specified issues concerning assisted reproduction, infertility, gestational agreements, and surrogacy agreements.

Effective: July 1, 2006.

Miller

January 9, 2006, read first time and referred to Committee on Judiciary.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 273

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-9-2-47.6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2006]: **Sec. 47.6. "Gestational carrier" means a woman who:**

4 **(1) carries or bears a child who is not conceived from the**
5 **woman's egg; and**

6 **(2) gives birth as part of a written gestational agreement**
7 **between the woman and an intended parent.**

8 SECTION 2. IC 31-9-2-126 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 126. (a) "Surrogate",**
10 **for purposes of IC 31-20, means a party to a surrogate agreement who**
11 **agrees to bear or bears a child that is ~~genetically~~ **biologically** related to**

12 **(1) the party who agrees to bear or bears the child and an intended**
13 **biological parent.**

14 **(2) an intended biological parent and a gamete donor who is not:**

15 **(A) an intended biological parent; and**

16 **(B) the spouse of the party who agrees to bear or bears the**
17 **child; or**



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(3) ~~two (2)~~ intended biological parents of the child.

(b) This term does not include a gestational carrier.

SECTION 3. IC 31-9-2-127 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 127. "Surrogate agreement", for purposes of IC 31-20, means an agreement that is entered into before the birth of a child between a surrogate and one (1) or more parties and that is intended by the parties at the time that the agreement is made to induce the surrogate to relinquish care, custody, and control over the child at birth to any of the following:

(1) An intended ~~biological~~ parent of the child.

(2) An intended ~~biological~~ parent of the child and another person who is not:

(A) ~~genetically~~ **biologically** related to the child; and

(B) the surrogate's spouse.

(3) Two (2) intended ~~biological~~ parents of the child.

SECTION 4. IC 31-19-1-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. **(a) The general assembly favors the public policy of giving a child the right to a permanent and secure home and the child's right outweighs the inconvenience that is caused to a nonresident who is properly given notice under IC 31-19-3, IC 31-19-4, and IC 31-19-4.5.**

(b) Notice that is properly given to a person under IC 31-19-3, IC 31-19-4, and IC 31-19-4.5 is sufficient to confer jurisdiction by a court over the person.

SECTION 5. IC 31-20-2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 2. Abandonment of Human Embryos

Sec. 1. (a) A human embryo that:

(1) is the result of in vitro fertilization or artificial reproduction; and

(2) is preserved or stored by a health care provider for at least five (5) years without:

(A) a written or oral communication by the biological parents concerning the disposition of the human embryo; and

(B) the health care provider being able to contact the biological parents, after diligent effort, at the last known address and phone number of the biological parents;

is considered to have been abandoned by the biological parents and the human embryo may be adopted for implantation by another

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individual.

(b) A person may not intentionally destroy or otherwise discard an abandoned embryo.

Sec. 2. Once an individual adopts an abandoned embryo, the individual is the parent of the embryo and any resulting child for all purposes.

Sec. 3. A person who knowingly or intentionally destroys or otherwise disposes of an abandoned human embryo commits unlawful destruction of an embryo, a Class A misdemeanor.

SECTION 6. IC 31-35-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) If requested by the parents:

(1) the county office of family and children; or

(2) a licensed child placing agency;

may sign and file a verified petition with the juvenile or probate court for the voluntary termination of the parent-child relationship.

(b) The petition must:

(1) be entitled "In the Matter of the Termination of the Parent-Child Relationship of _____, a child, and _____, the child's parent (or parents)"; and

(2) allege that:

(A) the parents are the child's natural or adoptive parents;

(B) the parents, including the alleged or adjudicated father if the child was born out of wedlock:

(i) knowingly and voluntarily consent to the termination of the parent-child relationship; or

(ii) are not required to consent to the termination of the parent-child relationship under ~~section 6(b)~~ **section 6(c)** of this chapter;

(C) termination is in the child's best interest; and

(D) the petitioner has developed a satisfactory plan of care and treatment for the child.

SECTION 7. IC 31-35-1-6, AS AMENDED BY P.L.130-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. **(a) Except as provided in subsection (d), a consent to voluntarily terminate parental rights given in accordance with this chapter:**

(1) may not be revoked or set aside for any reason after the court enters an order terminating the parent's parental rights; and

(2) may only be revoked or set aside before the entry of a court order terminating the parent's parental rights if the

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parent's consent was:

(A) obtained as a result of fraud or duress; or

(B) made when the parent was incompetent.

(b) Except as provided in subsection (b); (c), the parents must give their consent in open court unless the court makes findings of fact upon the record that:

(1) the parents gave their consent in writing before a person authorized by law to take acknowledgments;

(2) the parents were advised in accordance with section 12 of this chapter; and

(3) the parents failed to appear or the court determines that the parents' consent was:

(A) given in accordance with this chapter; and

(B) not the result of fraud or duress and not made when one (1) or both parents were incompetent to give the consent.

(c) The consent of a parent to the termination of the parent-child relationship under this chapter is not required if:

(1) consent to the termination of the parent-child relationship is implied under section 4.5 of this chapter, if the parent is the putative father;

(2) the parent's consent to the adoption of the child would not be required under:

(A) IC 31-19-9-8;

(B) IC 31-19-9-9; or

(C) IC 31-19-9-10; or

(3) the child's biological father denies paternity of the child before or after the birth of the child if the denial of paternity:

(A) is in writing;

(B) is signed by the child's father in the presence of a notary public; and

(C) contains an acknowledgment that:

(i) the denial of paternity is irrevocable; and

(ii) the child's father will not receive notice of adoption or termination of parent-child relationship proceedings.

A child's father who denies paternity of the child under subdivision (3) may not challenge or contest the child's adoption or termination of the parent-child relationship.

(d) The court may set aside an order terminating parental rights if:

(1) the county office of family and children; or

(2) the licensed child placing agency;

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that petitioned for the voluntary termination of parental rights under section 4 of this chapter files a petition with the consent of the parent whose parental rights have been terminated and the petition is filed not later than sixty (60) days after the court order that terminated the parent's parental rights.

SECTION 8. IC 35-46-5-3, AS ADDED BY P.L.126-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) **Except as provided in IC 31-20-2**, a person who knowingly or intentionally purchases or sells a human ovum, zygote, embryo, or fetus commits unlawful transfer of a human organism, a Class C felony.

(b) This section does not apply to the following:

(1) The transfer to or receipt by a woman donor of an ovum of an amount for:

(A) earnings lost due to absence from employment;

(B) travel expenses;

(C) hospital expenses;

(D) medical expenses; and

(E) recovery time in an amount not to exceed three thousand dollars (\$3,000);

concerning a treatment or procedure to enhance human reproductive capability through in vitro fertilization, gamete intrafallopian transfer, or zygote intrafallopian transfer.

(2) The following types of stem cell research:

(A) Adult stem cell.

(B) Fetal stem cell, as long as the biological parent has given written consent for the use of the fetal stem cells.

SECTION 9. [EFFECTIVE JULY 1, 2006] (a) **As used in this SECTION, "commission" refers to the health finance commission established by IC 2-5-23-3.**

(b) **In addition to the topics described in IC 2-5-23-4, the commission shall study the following:**

(1) **The need and feasibility of establishing parentage within the court system for children born through assisted reproduction, gestational agreements, or surrogacy agreements.**

(2) **The need and feasibility of the state to regulate infertility clinics and physicians licensed under IC 25-22.5 who specialize in providing infertility services.**

(3) **Current Indiana law concerning surrogacy and whether any changes are necessary to the laws.**

(4) **Gestational agreements.**

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- 1 **(5) Surrogacy agreements.**
- 2 **(6) Any other subject relating to assisted reproduction,**
- 3 **gestational agreements, or surrogacy agreements that the**
- 4 **commission considers relevant.**
- 5 **(c) This SECTION expires December 31, 2006.**

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